

Report on the inquiry into
**Rental housing licensing
in the City of Waterloo**



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**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

Report on the inquiry into rental housing licensing in the City of Waterloo

1. Summary

The City of Waterloo's rental housing licensing bylaw came into effect on April 1, 2012. Among other things, the bylaw establishes per-person floor area requirements, gross floor area requirements, a licensing fee, and separate regulatory regimes for:

- Non-owner-occupied rentals with up to 4 bedrooms
- Owner-occupied units with up to 4 bedrooms for rent
- Lodging houses (rental units with 5 or more bedrooms)

It also regulates:

- Recognized (grandparented) lodging houses
- Temporary rental units

Related zoning bylaws impose minimum separation distances or zoning restrictions on certain rental units with more than three occupants.

The Ontario Human Rights Commission (OHRC) was concerned that the licensing regime might discriminate against groups protected under the Ontario *Human Rights Code* (the *Code*) and cause them to lose their current housing, or to have a harder time finding housing in future. As a result, the OHRC initiated an inquiry to learn more.

During the inquiry, Waterloo residents reported concerns that – among other things – per-person floor area requirements for bedrooms, minimum separation distances, gross floor area requirements and costs associated with licensing may reduce availability of housing for students, large families, and other people protected by the *Code*.

The OHRC investigated these issues throughout the inquiry, and raised its concerns with the City.

The City has taken a number of positive steps, some of which are highlighted in the OHRC's *Room for everyone: Human rights and rental housing licensing* guide. For example:

- The City referred to the Ontario *Human Rights Code* in the bylaw.
- The City applied the bylaw to the entire city.
- The City said it will provide landlords with information about their responsibilities under the Ontario *Human Rights Code* when they apply for licences for their properties.

- The City bylaw states that the Director of By-law Enforcement shall, before revoking or suspending a licence, consider the impact on tenants.
- The City has committed to a five-year review of licensing bylaws and housing plans, to make sure that rental housing keeps pace with community demand and affordable housing needs and goals.
- The City has committed to monitor the impact of the bylaw and – in addition to a formal five-year review – also says that City staff most directly involved with overseeing the rental housing licensing program meet every week. The City also said that if they find the bylaw is having an adverse impact on the rental housing market in Waterloo (including an adverse impact on *Code*-protected groups), the City will be in a position to react quickly and effectively.
- The City agreed that it would continue to educate the public about the bylaw.

The OHRC commends the City for these promising practices, and includes recommendations later in this report.

However, the OHRC remains concerned about the potential impact of the rental housing licensing regime on *Code*-protected groups.

In considering whether Waterloo's licensing bylaw appears to be discriminatory, the OHRC must examine whether:

1. Elements of the rental housing licensing regime create a distinction that causes someone to be disadvantaged; and
2. The disadvantage occurs because of that person's association with a *Code* ground.

The OHRC concludes that per-person floor area requirements in the Waterloo licensing bylaw will in some cases be discriminatory, and should be eliminated.

While the City has said that minimum separation distance (MSD) limits are not contained in the City's recently passed Official Plan, and while the City has indicated that it is now undertaking a review of its Zoning By-law, which includes considering minimum separation distances, the City has not yet eliminated MSDs. The OHRC concludes that there is no justification for requiring non-apartment, non-high-rise rental units to be located a minimum distance apart from one another. The practice is arbitrary, and should be eliminated to ensure compliance with the *Code*.

Note that the OHRC uses the term MSD while the City of Waterloo uses MDS – both terms are used in this report.

From the information we obtained during the inquiry, it does not appear that other aspects of the bylaw are discriminatory.

2. Inquiry methodology

The OHRC's inquiry looked into whether anyone may have experienced *Code*-based discrimination as a result of Waterloo's rental housing licensing regime. The inquiry is authorized under clauses 29 (c) and (e) of the *Code* which permit the OHRC to "undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices" and to "initiate reviews and inquiries into incidents of tension or conflict."

The OHRC's mandate includes protecting the human rights of people who are vulnerable because of their age, receipt of public assistance, disability, family status and other factors. Many vulnerable people rely on rental housing. The inquiry was designed to collect information about these people's experiences with the rental housing licensing bylaw, and to collect information about the City's processes and policies relating to rental housing licensing.

2.1 Surveys and follow-up to surveys

The OHRC used surveys to collect information from tenants, landlords and organizations that help people who are looking for rental housing. Targeted outreach for this project included making surveys available on the OHRC's website, and emailing them directly to agencies that work with vulnerable people in the Waterloo community.

The OHRC did not accept any anonymous submissions, but did make a commitment to respect the confidentiality of responses. The OHRC did not disclose surveys to any party.

The survey period ran from March 8 to April 30, 2012. The OHRC received 228 submissions from people and organizations in Waterloo.

The OHRC conducted follow-up interviews with a number of survey participants via telephone and email in 2012, and again in early 2013.

Our goal was to collect people's stories about the impact of the bylaw. The surveys were not designed to constitute a statistically representative sample of the community. Instead, the goal was to collect qualitative data. The resulting responses have given the OHRC valuable insight into effects and potential effects of the bylaw and the experiences of the people who did respond.

The OHRC heard from tenants of diverse ages, backgrounds and household compositions. Of the 66 tenants who completed surveys, about half were students, and half were 25 years old or younger. A majority were single, living in a range of households, from renting a room from a family, to living alone, sharing a unit with one or two friends, or living in collective households of several people, or in lodging houses. Several reported living with a partner, and 11 tenants

reported having families with 1 – 6 dependents. Several reported that they or other household members share bedrooms. About a quarter were first-time renters in Waterloo.

Landlord responses ranged from a tenant who had a lodger, to landlords renting out one or two rooms in their homes, to owners of multiple properties. Just under one-third of landlords taking part in the survey lived in the same building as their tenants, and more than half owned only one property.

2.2 Additional comments

The OHRC provided contact information on its website for anyone who had questions or comments about the inquiry, and received 44 calls, letters and emails from residents outlining their perspectives and concerns. About 20 of these were from non-landlord homeowners and others not clearly identified as landlords or tenants, expressing various views on the bylaw.

2.3 Materials disclosed by the City

The OHRC requested, under clause 31(7)(a) of the *Code*, that the City share documents they had relating to the purpose and implementation of the bylaw. The OHRC reviewed the materials provided by the City – including documents about public consultations, reports, complaints relating to the bylaw, minutes from City Council meetings, and emails sent to and from City staff.

2.4 Correspondence with the City

The OHRC corresponded with the City and requested more information, where necessary, to make sure that the City's positions are accurately represented in this report.

2.5 Other information

The OHRC analyzed the information gathered from the surveys, additional commentary, disclosure materials and discussions with the City, along with data gathered from other sources, including primary and secondary sources and legal and social science research. The report was also informed by the OHRC's previous work on housing, including province-wide consultations with planners, tenant groups and a broad range of people in the housing sector.

This report is based on all of the submissions and information that the OHRC reviewed during the inquiry process.

3. Background

In discussions with the City starting in late 2010, the OHRC raised a number of concerns about whether the bylaw was targeted at, or would have a negative impact on, people protected by the *Code*. Although the City made some changes, when it passed the bylaw, some concerns remained unaddressed. The OHRC decided to inquire further.

3.1 An overview of Waterloo's Residential Rental Housing Licensing By-law

The City of Waterloo's rental housing licensing bylaw was passed in May 2011 and came into effect on April 1, 2012.

The licensing bylaw regulates:

- Non-owner-occupied rentals with up to 4 bedrooms (Class "A")
- Owner-occupied units with up to 4 bedrooms for rent (Class "B")
- Lodging houses (rental units with 5 or more bedrooms – Class "C").

Requirements for Class "A", "B" and "C" licences are:

	Bedroom limit	Per-person floor area requirement in bedrooms	Gross floor area requirement	Other requirements (not all are specified here)
Class "A"	Up to 4	7 square metres	No more than 40% bedrooms	
Class "B"	Up to 4 for rent	7 square metres	No more than 50% bedrooms	
Class "C"	5 or more	7 square metres	N/A	<ul style="list-style-type: none">• The building cannot:<ul style="list-style-type: none">• be more than 600 square metres• be more than 3 storeys• have more than 2 bathrooms• have more than 1 kitchen.• All bedrooms must have doors capable of being locked.• The owner must have written lease agreements with all tenants over age 16.

Unless renewed, a licence will expire "on the 31st day of March next following the issuance or renewal of the licence."¹

The bylaw establishes limited exemptions to the four-bedroom limit and the gross floor area requirements for Class "A" and "B" properties:

- Owners of rental housing properties that, as of April 1, 2012, already had written leases with five occupants were eligible until June 30, 2012 to apply for a Class "A" licence for a 5-bedroom property (or for a Class "B" licence for an owner-occupied property with five rented bedrooms). The provision granting such exemptions "expire[d] and be[came] of no force or effect after December 31, 2012."²
- Rental housing properties in which bedrooms exceed the gross floor area requirements but are in compliance with federal or provincial legislation and regulations, and with all City bylaws, were eligible until June 30, 2012 to apply for a Class "A" licence (or a Class "B" licence if the property is owner-occupied), but the exemption will become void if the property's gross floor area for bedrooms increases, or if the licence expires.³

The licensing bylaw also regulates

- Recognized lodging houses (Class "D")
- Temporary rental units (Class "E").

Requirements are:

- Rental housing properties that were licensed as lodging houses under the City's old lodging house bylaw may be grandparented as Class "D" units (and do not have to meet the Class "C" requirements described above), but the number of *bedrooms* cannot exceed the number of *persons* permitted under the old licence, and "[o]nce a Class "D" licence has expired, no person may thereafter apply for, or otherwise renew, a Class "D" licence in respect of the Rental Unit."⁴
- Applications for Class "D" (grandparented) licences had to be submitted by June 30, 2012.
- Non-renewable temporary Class "E" licences may be granted for up to 36 months, at the City's discretion.

To get an initial licence, landlords must pay the City a "preliminary consultations" fee of \$68.15 and a licensing fee ranging from \$374.82 to \$757.30 (depending on unit type). After that, they must renew the licence annually (renewals cost less than initial applications).

¹ *By-law 2011-047, Being a by-law to provide for the licensing, regulating and governing of the business of residential rental units in the City of Waterloo (amended by By-law 2012-004); section 4.6.*

² *Ibid*, Schedule 1 sections 2, 4 and 5 and Schedule 2 sections 2, 4 and 5.

³ *Ibid*, Schedule 1 sections 3, 4 and 5 and Schedule 2 sections 3, 4 and 5.

⁴ *Ibid*, Schedule 4 section 1(d).

According to the bylaw, the City may ask for a number of items on a yearly basis, including:

- A list of tenant names and contact information
- Proof of insurance
- Heating, ventilation and air conditioning "HVAC" inspection certificate
- Confirmation that the unit complies with the *Building Code Act* (and regulations under it, including the Building Code), the *Fire Code Protection and Prevention Act* (and regulations under it, including the Fire Code), and the *Electricity Act* (and regulations under it, including the Electrical Safety Code)

According to the bylaw, the City may ask for certain items at the time of first application and every five years after that, including:

- Police clearance certificate for the owner/applicant
- Electrical Safety Authority "ESA" inspection certificate
- Floorplans
- Plans for maintaining the property, parking and garbage disposal.

Landlords who fail to abide by the bylaw can have their licences revoked or suspended, and/or face fines of up to \$25,000 for a first offence (for an individual) or up to \$50,000 for a first offence (for a corporation). Fines increase for subsequent offences.

The bylaw stipulates that the Director of By-Law Enforcement, before revoking or suspending a license, shall consider:

- (a) the impact of any such licence revocation or suspension on any Tenants; and
- (b) imposing terms or conditions on any such licence revocation or suspension that would minimize the adverse impact on any Tenants, including the possibility of providing a reasonable time period before the licence revocation or suspension takes place to permit Tenants to find new housing or to seek relief in a Court or before the Ontario Landlord and Tenant Board.⁵

3.2 An overview of related zoning bylaw provisions

All rental properties (classes "A" through "E") that house more than three renters are defined as "lodging houses" in the City's zoning bylaws:

"Lodging House" [means] a building, or portion thereof, designed or used for residential occupancy where a proprietor offers lodging units for hire or gain directly or indirectly to more than three other persons with or without

⁵ By-law 2011-047, *Being a by-law to provide for the licensing, regulating and governing of the business of residential rental units in the City of Waterloo (amended by By-law 2012-004)*; section 5.3.

meals. A lodging house shall not include a hotel, motel, bed and breakfast, nursing home, group home, institutional or other similar use that is licensed, approved or supervised under any general or special Act.

"Lodging House [-] Class One" [means] a lodging house which is located in the whole of a building and:

- (i) occupied by four or more persons in addition to the proprietor and his/her household; or
- (ii) occupied by 6 or more persons without a proprietor and his/her household.

"Lodging House [-] Class Two" [means] a lodging house [located] within a dwelling unit occupied by 4 or 5 persons without a proprietor and his/her household.⁶

Lodging House Class One properties are included on the list of acceptable uses in certain medium and higher density zones in the City. These properties are subject to approval by a site plan review committee.

Lodging House Class Two properties are permitted in a number of lower-density zones, but certain minimum separation distances apply to them. For example, a Lodging House Class Two must be located at least 150m from any other Class Two properties in certain lower-density zones, and must be located at least 75m from any other Lodging House Class Two in certain medium density zones. For more information on this point, see the section on minimum separation distances, in section 4.2 of this report.

The City has developed a community improvement plan and passed an official plan amendment and zoning bylaw amendment affecting housing in the Northdale neighbourhood, immediately adjacent to both the University of Waterloo and Wilfred Laurier University. This initiative will likely affect the types of housing available in the area. While this initiative has been adopted by Waterloo City Council, it is not yet in force because appeals have been made to the Ontario Municipal Board. The Northdale initiative was not the focus of the OHRC's inquiry; the OHRC did not assess the interaction of the initiative with residential rental housing licensing, nor did it seek information about how the initiative might affect tenants in Northdale.

⁶ City of Waterloo Zoning By-Law Nos. 1108 and 1418, as amended; sections 2.41.1 – 2.41.3 and sections 2.44.1-2.44.3 respectively. Text that appears in one bylaw but not the other is enclosed in square brackets.

3.3 Impetus for the bylaw

Since 1986, Waterloo has done many studies into regulating rental housing. There have also been several related legal cases and legislative changes:

- In 1986, the City instituted a lodging house bylaw following a recommendation by a coroner's inquest into the fire-related death of a student. The bylaw was amended in 2000. Under the amended bylaw:
 - Landlords renting to four or more lodgers had to be licensed, and were subject to regular fire inspections
 - Landlords renting to a group of people who made up a "residential unit" (characterized, among other things, as a "single housekeeping unit") did not need to be licensed.⁷
- In 2003, the Ontario Superior Court of Justice found that multiple units in an older building which were leased to students met the "residential unit" exemption of Waterloo's lodging house bylaw. When determining if the exemption applied, the Court considered whether the premises constituted a "single housekeeping unit." The Court held that the distinguishing characteristic was whether there was individual or collective decision making with respect to the control of the premises. This decision was affirmed by the Ontario Court of Appeal.⁸
- In 2004, the City launched a Student Accommodation Study, and in the following years it embarked on several studies to examine alternative regulatory programs for lodging houses, and also for smaller-capacity rental houses.
- On January 1, 2007, the *Municipal Act* was amended to allow licensing of "residential unit" rental properties.
- In a 2010 report, City staff expressed concerns that rental unit owners were dismissive about fire prevention directives.⁹
- In a 2011 report, City staff stated:

Based on the current Lodging House By-law, many of the 4,300 currently unlicensed properties may not require a licence. This is a result of court decisions narrowing the scope of the by-law to a degree that renders the current legislation very ineffective in dealing with the issues that are of concern city wide.¹⁰

In 2010, the City announced that it would conduct a "Rental Housing Licensing" review. It used its new powers under the *Municipal Act* to initiate a licensing regime for low-rise rental units when it passed the rental housing licensing bylaw in 2011.

⁷ City of Waterloo By-Law No. 86-121, *A By-Law to Provide for the Licensing, Regulating and Governing of Lodging Houses in the City of Waterloo*, as amended by By-Law 00-140, ss. 2.4; 3.3.

⁸ *Good v. Waterloo (City)*, CanLII 14229 (ON SC), aff'd 2004 CanLII 23037 (ON CA).

⁹ *Rental Housing By-law Report PS-BL2011-001*, page 6.

¹⁰ *Residential Rental Housing By-law, PS-BL2011-007*, page 3.

The bylaw states that the City's purpose in regulating rental housing is to

- i. Protect the health, safety and human rights of renters,
- ii. Ensure that certain essentials such as plumbing, heating and water are provided to renters, and
- iii. Protect the residential amenity, character and stability of residential areas.¹¹

Health and safety

Health and safety considerations appear to have been a significant driving force behind creating the bylaw. City staff explained frustrations with the previous system, in a 2010 report:

One major challenge that Fire Prevention [who administered the bylaw along with Zoning and Building divisions] faces is the dismissive behaviour of owners towards the direction given to them. Often, they continue to operate and claim [the] house is not "Lodging" but rather a single house-keeping unit¹²

On the new bylaw's approach to fire safety, the City said:

...the new licensing regime continues to have regular fire inspections. Instead of scheduled annual or bi-annual inspections of every unit, the City now conducts risk-based and random inspections. Based on an extensive consideration of the issue, including input from trained fire professionals, the City believes that this change will both improve fire safety and be more cost-effective (thus, keeping licencing fees lower, which, in turn, may keep rent lower).¹³

Residents of Waterloo raised other health and safety concerns about rental housing, including mold, poor ventilation and insufficient heat.¹⁴

According to the City, less than six months after the bylaw had been implemented, "dozens of Building Code deficiencies and violations [had] been

¹¹ *Waterloo Rental Housing Licensing Bylaw 2011-047*, preamble.

¹² *Rental Housing By-law Report PS-BL2010-001*, page 6.

Fire Marshall Delegate Review No. FM-0602 (July 28, 2006) indicates that in 2006 (after the Court in *Good* had restricted the application of the definition of "lodging house" in the City's lodging house bylaw), a Fire Inspector issued orders against a house, even though it was not a "rooming house." The orders were appealed and rescinded because:

- The student renters leased the whole house, not single rooms in a "rooming house"
- ss. 22(1) of the *Fire Protection and Prevention Act* prohibits an inspector from issuing an order on a building that complies with the Building Code and to which retrofit sections of the Fire Code do not apply
- Occupants being unrelated does not automatically increase the fire hazard
- There was no indication that the building and occupancy presented a more hazardous fire situation than other single-family dwellings.

¹³ Letter from the City's counsel to the OHRC, September 28, 2012.

¹⁴ Various emails to City.

identified by the City" and "more than 80 percent of the electrical inspections required by the by-law [had] identified defects."¹⁵

The OHRC has consistently acknowledged the validity of health and safety rationales for licensing. Some of the new licensing bylaw requirements – such as compliance with the existing health and safety standards set out in the Fire Code, the Building Code and the Electrical Safety Code – appear related to the City's stated goal of resident safety.

If other aspects of the bylaw that go beyond the Building Code and Fire Code – such as the bylaw's per-person and gross floor area requirements – are meant to meet genuine health and safety (or planning) rationales, it is not clear why the City has exempted apartment buildings.

The City has commented that:

...there are good reasons to be particularly concerned about the standards of rental housing that do not apply as directly or forcefully to exclusively owner-occupied units. Renters are much more at the mercy of their landlords and generally have less ability to physically upgrade their premises than a homeowner. Landlords have a profit-driven incentive to minimize cost, which may impact on tenant health and safety if unchecked by licensing standards. The Building Code and the Fire Code also reflect that it is appropriate to impose requirements on lodging houses that are not required of other housing types. While there is an obvious functional overlap, operating a rental housing business is not identical in every fashion to operating an owner-occupied residence, and the City's by-laws (and provincial legislation) reflect this.¹⁶

If any of the bylaw requirements are discriminatory, the City must not simply show that it had "good reasons" for the requirement, but must show that it meets a vital need in a way that no alternative measure could. It is a very high standard.

Other factors

In addition to health and safety, the bylaw may be responsive to certain complaints received by the City. Documents disclosed by the City showed that there were significant numbers of complaints about the character of neighbourhoods, properties not being maintained by landlords, and the behaviour of some residents (including students). For example, there were:

- Many complaints related to run-down properties. These included concerns about uncut grass, weeds, unshoveled sidewalks, untrimmed bushes, debris on lawns and porches, and garbage left out after the pick-up day and left to sit for days or weeks.

¹⁵ Letter from the City's counsel to the OHRC, September 28, 2012.

¹⁶ Letter from the City's counsel to the OHRC, November 16, 2012.

- Several complaints about poor maintenance and repairs to the interior of rental properties. These included concerns about failure to clean carpets after sewage backup, broken doors, locks, windows and bathroom tiles.
- Several tenant behaviour-related complaints, particularly about noise (from people in the street, children, late-night parties and tenants' pets); broken bottles on sidewalks, streets, rental properties or neighbouring owner-occupied properties; and parking on grass.¹⁷

City documents show there was a much higher proportion of by-law enforcement complaints against rentals than non-rentals.¹⁸ The City received a number of complaints from the public about ineffective enforcement of the noise, parking and property maintenance bylaws, and/or the need for more staff to enforce bylaws.¹⁹

Where the City has imposed requirements – such as plans for parking and property maintenance – in an effort to address valid planning concerns and in a way that does not disproportionately affect *Code*-protected groups, then those requirements are appropriate.

However, some people expressed their concern that the bylaw had yet another motivation: to limit housing for certain vulnerable groups.

One tenant surveyed who receives Ontario Works benefits said of the City, “they don’t want poor people here any more.”

While at least one student organization appears to have supported the bylaw²⁰ and some students raised concerns about rental housing and the need for more monitoring,²¹ other students criticized the bylaw, directly to the City and also in the media,²² and raised concerns about its impact on students.

One student surveyed said: “This bylaw will force students into massive student apartment complexes.”

¹⁷ Various emails to City.

¹⁸ Internal City email with complaint numbers, March 16, 2011; City slideshow with complaint numbers, undated.

¹⁹ Various emails to City.

²⁰ Email from student organization representative to City, April 7, 2011.

²¹ Email to City, January 14, 2012. Opinion, “Living conditions are appalling in low-cost student housing,” *The Cord*, January 12, 2011 and The Editorial Board, “Unlicensed rental properties a concern for students,” *The Cord*, January 11, 2012.

²² Email forwarded to City February 10, 2011, and email to City April 21, 2011; newspaper articles including for example Adam Klett, “Big Trouble for Low-Rise Housing in Waterloo,” *Iron Warrior*, January 19, 2011 and Erin Matheson, “The Waterloo Open House for Rental Units,” *Iron Warrior*, February 2, 2011.

One parent wrote to the City expressing concern that:

[The] by-law can regulate someone's freedom to a private and quiet right to live in a town of their choice near the University of their choice. I am also very upset and disappointed with this regulation as I truly agree that this is a serious infringement on our basic human rights and impacts to our freedom of choice of where to live.²³

There certainly were concerns about student housing in the community. Some residents shared concerns with the City about how what they viewed as "family" neighbourhoods were becoming "student" neighbourhoods.²⁴

City documents from 2002 and 2003 show a policy of encouraging development of high-density apartment housing in nodes and corridors near universities. While one of the stated goals is to increase student housing near universities in response to student preference, another is to "draw students out of existing singles, thereby increasing the numbers of singles available for non-student households..."²⁵ Another document stated in 2004 that the goal of the City's land use plan was "to encourage more student housing in areas of high intensity near the Universities and discourage the conversion of low density housing to student rental housing in areas of low intensity."²⁶

The City states that its bylaw had no intent to target students:

The statistical reality is that a large proportion of rental housing in Waterloo constitutes student housing. Accordingly, students are directly affected by the Rental Housing Licensing By-law, and it would be irresponsible for the City not to take this into account. To suggest that the City actively treats students or young people differently than other persons, however, is simply incorrect. The by-law specifically excludes student residences operated by a college or university. The by-law does not apply to apartment buildings, even though apartment buildings constitute, by a very wide margin, the most common type of new construction designed for student housing.²⁷

The City states that:

[It] understands its duty not to discriminate against Code-protected groups. Indeed, as a municipality, it is obligated not to pass by-laws that improperly discriminate against any person, Code-protected or not. It complies scrupulously with this obligation.²⁸

²³ Email to City, May 24, 2011.

²⁴ Various emails to City.

²⁵ *Height and Density Policy Discussion Paper* DS02-38, June 12, 2002, page 23.

²⁶ *Student Accommodation Study Final Report* DS04-47, July 30, 2004, page 5.

²⁷ Letter from the City's counsel to the OHRC, September 28, 2012.

²⁸ Letter from the City's counsel to the OHRC, September 28, 2012.

The OHRC acknowledges that some City documents clearly reflect this understanding. The City included language in the bylaw referencing the *Human Rights Code*, and representatives of the City have publicly indicated that the bylaw cannot target students.²⁹

3.4 Alternatives to the bylaw

As described above, the City has identified that the goals of its bylaw are to protect the health, safety and human rights of renters, to ensure that certain essentials such as plumbing, heating and water are provided to renters, and to protect the residential amenity, character and stability of residential areas.

Other tools also address these goals. For example, existing provisions in the Fire Code and Building Code work to protect the health and safety of renters. Inspections can occur and be mandated under a bylaw that does not also draw in per-person floor area requirements and other elements that could disadvantage *Code*-protected groups.

The OHRC challenges municipalities, including Waterloo, to question whether their licensing bylaws add restrictions without adding additional protections.

The City states that the rental housing licensing bylaw must be examined "within the context of the broader set of municipal programs designed to address a variety of inter-connected issues, including the sufficient availability of good quality rental housing, health and safety of tenant and non-tenant municipal residents, property and community standards, and both short-term and long-term planning issues."³⁰

The City has stated that it is not attempting to address behavioural issues through the bylaw. That is good, as a rental housing licensing bylaw is not an appropriate place to address any such issues. In documents disclosed to the OHRC by the City, a number of recommendations unrelated to licensing have been made to address complaints about behaviour issues in student housing and other types of housing.³¹

²⁹ Notes from a Town and Gown meeting, January 25, 2011; Email to the public, April 21, 2011

³⁰ City staff letter to OHRC Executive Director, December 22, 2010.

³¹ Recommendations/Actions in the City's *Student Accommodation Study Final Report* DS04-47 (July 30, 2004) include: improving proactive by-law enforcement in the areas near the universities; increasing the penalty for illegal lodging houses; working with the regional police to prevent noise and alcohol violations and penalize violators; continue to work with the universities to establish programs to encourage acceptable off-campus behaviour; increase community awareness of bylaws and enforcement activities; and increase communication and understanding among all stakeholders.

Many of these were later implemented and shown to be effective, including:³²

- Community Mobilization Police Officer and Community Development, Town and Gown liaison staff visits to offending houses
- Neighbourhood building events
- Mediation service.

3.5 Implementing the bylaw

In *Room for everyone: Human rights and rental housing licensing*, the OHRC recommends that municipalities that are considering rental housing licensing consult with groups who are likely to be affected by that licensing, through accessible, well-advertised general meetings and also through targeted outreach to vulnerable or marginalized groups.³³

The City has provided the OHRC with a list of public meetings and other consultations undertaken as part of its process, including meetings with university and student union leaders, landlord groups and others before it passed the bylaw.³⁴ It sent numerous mailings out to landlords. The City also offered training sessions to landlords.³⁵

A community organization that responded to the OHRC's survey said that the City did not consult with them, but that they "...had the opportunity to comment as did any member of the public before the bylaw was passed." However, they said they didn't realize until more recently the effect the bylaw might have on their "usual client base" because they understood it to be more of "...a 'student housing' strategy." They said they have since learned that it may affect the availability of rooming houses and have other implications for tenants.

In April 2011, an organization told the City that many tenants and other residents were unaware of the process, and assumed the bylaw related only to students.³⁶

Some residents raised concerns with the City about the lack of representation of students, and/or of renters more generally, in the process.³⁷

³² *Town and Gown* report, 2005. This report stated at pages 3, 8 and 9 respectively that visits to offending houses "although labour intensive, have been very successful and have a very low recidivism rate;" it stated that neighbourhood building events "creat[e] a sense of community for the students and they are able to meet their neighbours being helpful in the future when they want to or need to approach them;" and it stated that the mediation services "program is useful for issues that are not covered by an enforcement issue or where it seems more appropriate to discuss the issue for a resolve rather than having the issue go through the Court system."

³³ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 2.

³⁴ Letter from the City's counsel to the OHRC, September 28, 2012.

³⁵ Various emails from City staff.

³⁶ Organization report submitted to City of Waterloo, April 25, 2011: "We are deeply concerned that the majority of Waterloo's residents have assumed that this bylaw is about addressing the 'student housing problem', and are uninformed about its broader implications."

³⁷ Various emails to City.

One person wrote about being “very concerned at the lack of representation of renters” at a consultation meeting, and asked the City to consider “moving one of the meetings to the university in an effort to attract student renters” to hear from students in addition to landlords.³⁸ Another said “[g]iven the scary environment at the earlier consultations, I think staff may need to solicit meetings with non-landlord property owners, and with students and other tenants.”³⁹

At a Town and Gown meeting on June 28, 2011, a student federation representative told the City that there was a lot of “misinformation circulating” about the bylaw.⁴⁰

One student tenant survey respondent said, “the consultation did not do a respectable job of engaging the citizens it was going to most directly affect.”

The City has stated to the OHRC: “Anyone who is legitimately confused about the application of the Rental Housing Licensing By-law need only contact the City. Staff will be pleased to assist.”

While it appears that the City held many publicly advertised meetings and other consultations, and conducted valuable targeted outreach to and training for landlords, it also appears that the City was not always successful in communicating information about the bylaw (particularly before it was enacted) to tenants who might be affected by it.

In *Room for everyone: Human rights and rental housing licensing*, the OHRC recommends that licensing bylaws be rolled out in a consistent, non-discriminatory way.⁴¹ Waterloo appropriately applied its bylaw to the entire city, from the outset.

3.6 The current housing environment

In *Room for everyone: Human rights and rental housing licensing*, the OHRC says:

In accordance with the 2005 *Provincial Policy Statement*,⁴² municipalities should provide for an appropriate range of housing types and densities required to meet projected requirements of current and future residents by, among other things, establishing and implementing minimum targets for providing housing that is affordable to low and moderate income households.⁴³

³⁸ Meeting feedback form, January 13, 2011.

³⁹ Email to City, April 11, 2011.

⁴⁰ Town and Gown meeting notes, June 28, 2011, pg. 1.

⁴¹ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 4.

⁴² *Provincial Policy Statement*, Government of Ontario, 2005, section 1.4 (Housing).

⁴³ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 5.

During the inquiry, the OHRC heard concerns that the current rental housing market in Waterloo is challenging, especially in terms of cost and availability. An organization that responded to the OHRC's survey said that it has become harder for people to find housing in Waterloo in the neighbourhood of their choice, explaining that "cost and availability are linked challenges." The agency said that youth, trans men and women, large families, people with mental illnesses and addictions, people on Ontario Works and some Muslim families all report that landlords discriminate against them, and that some landlords resist housing women fleeing violence:

... We have landlords and neighbours tell us that youth, people with mental illnesses and addictions, and women fleeing violence, should not be housed in their neighbourhoods. Typically, these landlords and neighbours claim to have the [well-being] of our clients in mind, and state that their neighbourhoods are simply not the right ones (because they lack supports and amenities, are too far from bus routes, are unsafe, etc.) for our clients to live in.

Another organization said:

Many clients, whether in Waterloo or not, have problems finding affordable and decent housing due to their low incomes. Having disabilities, particularly mental health issues, can also make it very difficult [to] find safe and affordable housing locally. Large families (especially those on fixed low incomes) have a very difficult time finding adequate and affordable housing.

A tenant who identified as having a "lower income" shared her concerns about decreasing availability of affordable housing in Waterloo:

While I have been hearing on the radio about the need for affordable housing it seems to me that Waterloo has been making laws that are removing much of the affordable housing already available.

... Now the city has made even renting a room more difficult as not all landlords will be willing to go through the process and expense of getting licensed, and if they do will probably pass along the expense to their tenants. While it may not have been the city's intent, it does feel to me that because I have a lower income I am not very welcome in Waterloo.

A tenant who received Ontario Works benefits said "it is already REALLY HARD" to find "reasonable accommodation," and that "rent would go up, of course."

The OHRC heard that some landlords rent only to students. On the other hand, one tenant said he has heard landlords say things like "students can't be trusted and will turn everything into a party," and many state students aren't allowed.

A landlord recently told the OHRC that the housing market has changed in that "now there's an enormous over-supply of housing for students... because of all the new ones that were opened up last year [in 2012]."

Some tenants raised concerns about the *type* of supply, however. One student tenant said:

I think the strategy they're using is to eliminate all the low-rise buildings for students. They're building high-level residences ... [the city has passed] the bylaw so that more students will have to move into the new high-rise buildings. Like this year, next to the school, one is charging \$700 per month per person – now I'm paying \$450 a month.

... [They're] eliminating the affordable housing options. The difference between \$450 and \$700 per month is really a lot of money. We can save 3k here [in our house] per year, vs. one of those high-rises. People renting houses use the money from OSAP – we still have to pay those loans back, and we'll have double the housing costs to pay back.

Some landlords provided similar information. One, who had three students sharing a 3-bedroom apartment for \$1,100 per month, said "they find this much more affordable than the \$5-600 monthly rent (each) in the new towers that the city is promoting."

The City stated in its 2004 *Student Accommodation Study Discussion Paper* that "Apartment buildings are a better form of student housing than converted lodging houses for several reasons" including their greater capacity, less significant history of noise, maintenance and property standards complaints, preference of students for smaller units (1–3 roommates), and because of the opposition of permanent residents to lodging houses.⁴⁴

The City opined that the bylaw cannot be examined in isolation and that "the exceptionally few lawful rental units that may have been "lost" as a result of the Rental Housing Licensing By-law have been more than amply replaced by new construction or the change in use of other, previously non-rental properties."⁴⁵

⁴⁴ See *Student Accommodation Study Discussion Paper* DSO4-16 (March 3, 2004), pg. iii. In its later *Student Accommodation Study Final Report* DSO4-47 (July 30, 2004), the City stated: "Any long term plan for student housing must recognize the transient nature of students. Most students will spend 3 to 5 years in the community and then they will leave. To expect that students will be committed to the long term future of a neighbourhood is naïve and unrealistic... Single detached homes and condominium townhouses are not the most appropriate forms of housing for a transient population. Whereas apartment buildings are appropriate." See page 16.

⁴⁵ Letter from the City's counsel to the OHRC, September 28, 2012.

The City states that:

It is the City's best information that rents have remained stable across the municipality, that the vacancy rate has slightly increased, and that the number of rental units on the market has significantly increased since the Rental Housing Licensing By-law was passed in 2011.⁴⁶

In 2010, the City shared with the OHRC a number of its strategies to support a diverse housing stock, including:

- Promoting a range of housing types and tenures
- Maintaining a Town and Gown committee
- Facilitating community development programming
- Conducting a Student Accommodation Study
- Zoning many Planning Districts in the City to allow for low-rise multi-unit housing forms like duplexes, triplexes and townhomes
- Facilitating the development of affordable cooperative housing through the purchase and redevelopment of a former inner-city school
- Using development "per bedroom" charges to help smaller units
- Granting development charge payment deferrals to property developers who have provided "affordable" housing
- Granting exemptions from development charges for student residences on lands designated as "Major Institutional"
- Developing an inspection program to ensure life safety in these units
- Formally recognizing over 500 accessory apartments.⁴⁷

4. Reported impacts

During the inquiry, the OHRC heard concerns from tenants, landlords and other individuals about:

- Per-person floor area requirements
- Minimum separation distances
- Different systems based on number of bedrooms
- Gross floor area requirements
- Licensing fees

⁴⁶ Letter from the City's counsel to the OHRC, September 28, 2012.

⁴⁷ Letter from City staff to the OHRC Executive Director, December 22, 2010.

4.1 Per-person floor area requirements

In most cases, the bylaw requires that each rented bedroom "shall be a minimum of seven (7) square metres per occupant." This requirement is significantly more stringent than the Building Code.⁴⁸ This requirement could render many Building Code-compliant bedrooms un-rentable to couples, or to other renters or family members who intend to share the bedroom.

A City document from 1989 states that imposing a minimum floor space per person "would affect large families."⁴⁹

The City commented:

The floor space requirements were not based on formal published standards; they are designed to provide tenants with adequate accommodation, including reasonable-sized rooms, consistent with the City's health and safety concerns and the City's intention to maintain rental housing stock in accordance with its short-term and long-term planning objectives. The local universities have identified serious mental health issues observed in their students relating directly to housing conditions, and they urged the City specifically to incorporate floor space requirements in its Rental Housing Licensing By-law with a view to ensuring that tenants have healthy and liveable accommodations.⁵⁰

The City states that, since its 1989 report, its work on numerous projects ensures that families and other Code-protected groups do in fact have adequate housing available, and that the floor space requirements do not negatively affect them in "any material fashion."⁵¹ It cites concerns about a trend toward sub-standard housing, with unreasonably small bedrooms and unreasonably little amenity floor space as a rationale for these requirements.

The OHRC supports the City's efforts to address genuine health and safety concerns. However, if the rental housing in question meets Building Code, Fire Code and electrical safety standards, and would be acceptable if it was owned

⁴⁸ Section 1.4.1.2 of the Building Code defines a "dwelling unit" as a "suite [which in turn is defined as "a single room or series of rooms of complementary use, operated under a single tenancy..."] operated as a housekeeping unit..."

Sections 9.5.7.1 and 9.5.7.2 of the Building Code require the following per-bedroom (rather than per-occupant) floor areas in dwelling units:

- 9.8 square metres for a master bedroom without built-in closets
- 8.8 square metres for a master bedroom with built-in closets
- 7 square metres for other bedrooms without built-in closets
- 6 square metres for other bedrooms with built-in closets.

Section 9.5.7.4 of the Building Code requires that "Sleeping rooms other than in *dwelling units* shall have an area not less than 7 m² per person for single occupancy and 4.6m² per person for multiple occupancy."

⁴⁹ *Related/Unrelated Persons Legislation: Zoning By-law Amendments*, 89-98, page 9.

⁵⁰ Letter from the City's counsel to the OHRC, November 16, 2012.

⁵¹ Letter from the City's counsel to the OHRC, September 28, 2012.

housing, it is not clear on what basis or by what standard the City is defining such housing to be unreasonable or "sub-standard."

One tenant said:

...I'm friends with a refugee family who ... at one point they were living in a two-bedroom apartment, and there were quite a lot of them living there, and I'd hate if this bylaw was against them – they had 3 children in one room, the mom and her sister in the other room.

She also shared her concerns about how the 7m² requirement could affect her, given that her daughters shared a room smaller than that:

My two daughters (5 and 2) share a small bedroom, my husband and I have a bedroom, and my unborn child will soon occupy the third bedroom. We also usually have a boarder in a large finished basement room. I'm not sure how this bylaw will affect us but I'm nervous it will in some way. We are a low income family, so any rise in rent would be very harmful to us. Also, I would never want my daughters in a separate room, even if I had the space, because I see how it bonds them and enriches their lives ... I wouldn't want to know that my family was somehow breaking the law by having my kids share a bedroom."

The OHRC followed up with this tenant recently. She said that a bylaw officer visited her home and told the landlord that the 7m² requirement wouldn't apply to them, because she had signed the lease before the bylaw came into effect, but wouldn't provide her landlord with anything in writing about the exception. She said that she was worried about finding a place if she ever has to move. She also stated:

I did express my concern to the bylaw officer about my kids sharing a room and the human rights impact of the bylaw, and the bylaw officer said it was because of human rights that they had to apply it to families and students the same.

Some landlords told the OHRC that they have had to turn away families because if they accepted them they would be in breach of the 7m² requirement. Two landlords who each rent out three-bedroom houses recently described specific examples of this screening – in one case two adults and three children, in another two adults and six children. One of these landlords told the OHRC that she currently houses a couple and their three adult children. She said she contacted the City and was told that she could apply for an "exception," but had not yet finalized the process.

Another landlord's survey response said:

We would have to restrict our tenants to families of four or less, as the three bedrooms in our 1600 square foot townhouse would not allow for the 7 square metres per occupant if two children roomed together.

When the OHRC followed up with this landlord recently, she said:

The previous tenants moved out in October 2012. They were a family with two children. When finding replacement tenants for November [2012] our property manager only screened in applicants with a family configuration of two children or less in order to conform with this rule.

Other landlords say that while they originally feared that they would face challenges because of the 7m² requirement, those challenges did not become a reality. For example, one landlord stated on her survey that:

I will need to know if Mom + Dad intend to be together in the Master Bedroom, which is 12.9 sq metres – maybe I can't rent to family.

In a follow-up conversation with the OHRC, however, she told us that she:

... spoke with city by-law people about the size of the master bedroom and they did not have a concern since in their calculation process the measurement met the requirements.

Another landlord stated on her survey that:

My other property is rented to a family with small children which I might not be able to keep since its only a 3 bedroom and according to the new rental licence it might not accommodate 2 children in one room.

In a follow-up conversation with the OHRC, however, she said that while by her measurement the room shared by the children is 10 feet by 11 feet (less than 14 square metres):

[I]t must meet [the city's] quota I think, because I gave in the plans and gave the measurements, and they issued the licence, so I assume I met the requirements.

One landlord said:

I think if it's little kids, like under 16 or something, they can share. ...
I don't remember where I heard that, that was my impression.

It is possible that the landlords above may have measured differently than the City and that, by the City's analysis, the 7m² requirement was fulfilled, or it is possible that the City granted licenses to these landlords in error. It is also possible that the City is granting exemptions in some cases to the 7m² requirement. If the City is granting exemptions to the 7m² requirement, the OHRC is not aware of whether these exemptions are time-limited, and is also not aware of any public guidelines that show how the City grants such exemptions.

Per-person floor area requirements imply that the landlord must ask intrusive questions such as whether the renters intend to share bedrooms, and make rules about how tenants use their home. Some landlords may be avoiding asking these questions. For example, one landlord said "how am I supposed to know

[about bedroom-sharing arrangements]? I don't ask." However, other landlords have said that they do ask intrusive questions and screen people out in an effort to abide by the 7m² requirement.

One landlord recently described having to tell a past tenant that his girlfriend couldn't move in because the bedroom was less than 14m², and also said she had screened out prospective tenants because of the rule:

I have had to ask intrusive questions of tenants because it appeared to me that some might share a bedroom that did not meet the 7m² per person per bedroom (for example when a group of people wanted to rent the house and some were boyfriend/girl friend), and I had to explain that this would technically be illegal. Then when they confirmed that indeed this was their intention, to share a bedroom, along with the rest of the house, I ended up turning them away because I was concerned I would have problems with the city if the property was inspected. Then I started asking all the prospective tenants that came through to see the house how they intended on using the house.

I thought if I ask them the personal questions before they move in to the house, and I screen them this way, then at least I wouldn't have to possibly evict someone later if the city inspected the house. Of course I didn't want to be asking anyone questions about their personal living arrangement and relationships. This always made me feel very uncomfortable.

Under s.10 of the *Residential Tenancies Act*, and under Regulation 290/98 of the *Ontario Human Rights Code*, landlords are permitted to use a limited set of criteria when selecting prospective tenants – none of which include how many people will be sharing bedrooms.

The City states that the new bylaw does not require more intrusive landlord questioning than was required under the previous bylaw, and that:

The previous licensing by-law applied if more than three persons rented a unit who were not operating as a single housekeeping unit. The inquiry necessary to determine if a group of persons constituted a single housekeeping unit included consideration of whether they exhibited collective decision-making, whether they functioned as a cohesive unit, and what level of familiarity they had with one another, including how many people used any given bedroom.⁵²

⁵² Letter from the City's counsel to the OHRC, September 28, 2012.

The City states that it abandoned the "single housekeeping unit" criteria in part because the test was difficult for landlords to apply and the City was concerned that some non-traditional families and other households could be improperly denied rental housing as a result.⁵³

However, the bylaw's per-person floor area requirements are being applied to all housing captured by the bylaw, not just to lodging houses. This means that tenants of most low-rise rental housing are now subject to intrusive questioning and rules about sharing bedrooms, and can potentially be excluded from housing on that basis.

Questioning people about sharing bedrooms can be discriminatory based on *Code* grounds such as marital status, family status and sexual orientation, as it indicates an intent to deny housing based on these grounds. It is the OHRC's position that people should be able to share a bedroom without the scrutiny of the landlord or the City.

Exclusion from housing based on the tenants' intention to share a bedroom could lead to human rights complaints relating to marital status, family status, sexual orientation, and possibly other grounds.

The OHRC has heard that the per-person floor area requirement of 7m² has caused landlords to limit housing opportunities for *Code*-protected groups, like larger families. The requirement means landlords may have to ask intrusive questions about sleeping arrangements.

The OHRC concludes that the bylaw's per-person floor area requirements will in some cases be discriminatory. As noted in *Room for everyone: Human rights and rental housing licensing*, recommendation 8:

People should be able to share a bedroom, if they choose, without the landlord or the municipality peeking through the keyhole. In fact, any related questioning or investigation could lead to human rights complaints.⁵⁴

4.2 Minimum separation distances (MSDs)

MSDs can adversely affect *Code*-protected groups by restricting housing options. As noted in *Room for everyone: Human rights and rental housing licensing*, the OHRC has intervened in cases with respect to minimum separation distances. One of these cases – before the Human Rights Tribunal of Ontario – was launched by the Dream Team, an organization that advocates for supportive housing for people with disabilities. In this case, the Dream Team challenged the

⁵³ Letter from the City's counsel to the OHRC, September 28, 2012.

⁵⁴ For a related discussion of how limitations on the number of occupants per room or bedroom can impact human rights, see *Policy on human rights and rental housing*, OHRC, Part V, section 4.3.3.

City of Toronto's minimum separation distance requirements for group homes for people with disabilities. An expert, hired by the City of Toronto to examine issues arising from the City's imposition of minimum separation distances on group homes, said in his report that he could not find a "sound, accepted planning rationale" for those minimum separation distances and recommended that they be removed.⁵⁵

Documents provided by the City of Waterloo show that students and older persons could be particularly affected by any decrease in the availability of lodging houses, and that minimum separation distances can act to decrease the availability of lodging houses, particularly in neighbourhoods near universities.⁵⁶ They also show that increasing the MSD in a way that limits lodging houses could increase rental prices, create an incentive for illegal lodging houses, and encourage marginal units to stay on the market because of lack of choice for students.⁵⁷

In 2002,⁵⁸ the City recommended creating apartment buildings to alleviate the need for lodging houses. Two years later, the City increased the MSD for the most common type of lodging houses⁵⁹ to 150 metres, which significantly reduced the availability of lodging houses.

The City says that:

Between 2002 and 2010, 2,386 new apartment and triplex units were constructed in Waterloo. Since then, approximately 1,800 apartment units (representing approximately 5,600 bedrooms) have been proposed and are either under construction or are proceeding through the Site Plan or Building Permit stage. Many of these units contain 4 or 5 bedrooms. None of them are subject to the Rental Housing Licensing By-law.⁶⁰

⁵⁵ Sandeep K. Agrawal, *Opinion on the Provisions of Group Homes in the City-wide Zoning By-Law of the City of Toronto*, at pages 3 and 28, released February 28, 2013 by the City of Toronto, as a supplementary report to the *Planning and Growth Management Committee*, in *Final Report on the City-wide Zoning By-law: Supplementary Report on Human Rights Challenge to Group Home Zoning Regulations*, PG13020.

⁵⁶ "Rooming, boarding and lodging houses (RBL's) are an important form of housing in the City of Waterloo. ... In Waterloo, the off-campus university student population (estimated at 10,300 is the single largest source of demand for this type of housing. Another significant source is the City's seniors population." *Rooming, Boarding, Lodging House Definition Review* 92-16, March 13, 1992, page 1.

Regarding how MSDs are "the prime constraint to the development of more lodging houses...", see *Student Accommodation Study Discussion Paper DS04-16*, March 3, 2004, page 30.

⁵⁷ *Height and Density Policy Study Discussion Paper DS-02-38*, 2002, page 22.

⁵⁸ *Height and Density Policy Study Discussion Paper DS-02-38*, 2002, page 22.

⁵⁹ Class 2 lodging houses: non-owner occupied with 4-5 occupants, which at that time made up more than 80% of lodging houses. See *Student Accommodation Study Discussion Paper DS04-16*, March 3, 2004, page 14.

⁶⁰ Letter from the City's counsel to the OHRC, September 28, 2012.

Even if apartment buildings make up rental spaces lost to MSD requirements, they may not provide equivalent types of accommodation, at an equivalent cost. A City document shows virtually equal student preferences for apartments (47.8%) vs. houses and/or townhouses (47.3%).⁶¹ A group of students told the City that they preferred non-apartment housing and that the bylaw would result in less choice.⁶²

Under the City's old lodging house regime, "residential units" that were "single housekeeping units" could be exempt from MSD requirements. This is no longer the case. As a result, some lodging houses that were operating legally in the past regardless of MSD requirements, could now fall subject to those requirements and have to stop operating (or reduce the number of renters to three⁶³ to be exempted from the MSD requirements).

One landlord said:

The city is using [the] bylaw as a clever way around the ruling of the Terrance Good case. They are forcing us to turn our "residential dwellings" into "lodging houses" because we need a licence under the municipal act.

⁶¹ *Height and Density Policy Study Discussion Paper DS-02-38*, 2002, page 10, citing a "winter" 2002 study by a University of Waterloo graduate planning student.

⁶² Letter to City from a group of students, undated; Email to City, January 26, 2011.

⁶³ There is some lack of clarity around applying the MSD to properties that are lodging houses for the purposes of the zoning bylaw (because they have more than three people) but that are not lodging houses for the purposes of the licensing bylaw (because they have four or fewer bedrooms). For example:

- One landlord told us that the minimum separation distance requirement limited him to renting out **four rental bedrooms**. (Emphasis added)
- One landlord told us: "I have current residential dwellings with more than **4 tenants**. Due to MSD they will not be able to get a licence..." (Emphasis added)
- Another landlord said: "My property will be grandfathered into the bylaw as I will be eligible for a class D so I will not need to reduce the bedroom count immediately. However, in the future, if I lose the class D license due to the strict reapplication deadlines, I will be forced to reduce the number of bedrooms as it will be impossible for a renewal with greater than **4 bedrooms** in my zoning classification." (Emphasis added)
- Another landlord shared her confusion: "...I can only obtain a class A licence with a **max number of occupants of 3**, regardless of the fact that my house has 5 bedrooms and can comfortably accommodate a large family or group of friends. I'm not sure what exactly would make it a lodging house as I believed the new system would replace the old system which granted lodging house licences. Now they are 'class' licences. In any case, with the licence I can possibly be granted (the class A for 3 bedrooms since [Minimum] Distance Separation requirement applies), I will have to inquire of my tenants before renting to them, exactly how they plan on using the house, and will only be able to advertise the house accordingly. I fear the city will fine me if I don't." (Emphasis added).

Another landlord expressed concerns about the impact of MSDs:

All my properties are less than 150 metres from a licensed lodging house. Therefore I am only allowed to rent 3 bedrooms in my properties. One is a grandfathered legal non-conforming duplex, so it is legally divided into 2 units, one with 2 bedrooms and one with 3 bedrooms. The other 2 units have potentially 4 bedrooms in one and 5 bedrooms in the other, but I am only allowed to rent 3 bedrooms in each.

Another landlord told the OHRC that, in some areas, MSDs would potentially eliminate significant numbers of rental housing units, or reduce the available rooms in units, and described the impact on two 4-bedroom units:

I have a legal duplex with a limit of 3 and 3 students because of the MDS. [Previously] I was able to rent to 4 and 4 as the students came as a household. This will be reduced by the new 150 meters MDS in the licensing bylaw... even though my bedroom sizes are above the requirement for two people, and so is the 40% bedroom to floor space ratio.

This landlord said that, because of the limitation on the number of rooms, the rent per person would increase:

... the rent is \$495.00 plus all utilities. Next year [in 2013] it will be \$660.00 plus utilities per room with three bedrooms in the upstairs unit and the same downstairs. That still doesn't include the cost of the licence, which for this building is at least \$1600.00 and this will be added to next [year's] rent. This is all only because of the by law.

This landlord confirmed recently that the City sent a letter saying that two tenants have to move out.

The City commented that the MSDs have been in place (with some revisions) for almost 20 years, and that:

The MDS provisions of the Zoning By-law already applied to rental units housing more than three persons. The effect of the Rental Housing By-law is to also pull in any rental housing of five or more bedrooms within certain zones. However, given that there would be an insignificant number of rental houses in these zones that have five bedrooms but are rented to three or less tenants, the City does not believe that the Rental Housing Licensing By-law has prevented any previously lawful rental property from operating because of MDS restrictions.⁶⁴

The City went on to say:

Not one otherwise lawfully operated lodging house has been shut down by the City due to MDS restrictions – ever.⁶⁵

⁶⁴ Letter from the City's counsel to the OHRC, September 28, 2012.

⁶⁵ Letter from the City's counsel to the OHRC, September 28, 2012.

While MSDs have been around for 20 years, that does not make them *Code* compliant. Also, the City's reasoning does not reflect the fact that "single housekeeping units" are no longer exempt. As a result, some rental properties that were operating legally (without being subject to MSDs) may now fall under the separation requirements.

There is no justification for requiring non-apartment, non-high-rise rental units to be located a certain distance apart from one another. Arbitrary minimum separation distances that are applied to rented accommodations but not to owned homes of a similar size and type can contravene the *Code*. They are about regulating people, and often flow from stereotypes associated with renters. As noted in *Room for everyone: Human rights in rental housing licensing*, instead of planning for inclusive neighbourhoods, minimum separation distances can limit the sites available for development and restrict the number of sites that are close to services, hurting people who are in need of housing.⁶⁶

4.3 Different systems based on number of bedrooms

The bylaw stipulates that (except for some grandparenting exemptions) properties with more than four⁶⁷ bedrooms are not eligible for Class "A" or "B" licences, but instead must apply for a class "C" lodging house licence.

The distinction between class "A", "B" and "C" does not appear to have any meaningful impact on minimum separation distances; they are governed by the zoning bylaws' threshold of "more than three people."⁶⁸

Even though the class "A", "B" and "C" distinctions do not appear to create disadvantages with respect to minimum separation distances, other disadvantages may arise.

For example, in a class "C" lodging house, all doors must be capable of being locked and the owner must have written leases with all people over age 16.

These requirements could disproportionately affect *Code*-protected groups. For example, if a couple choose to live in a class "C" lodging house, each of them must enter into a lease with the landlord. Families who live in a class "C" lodging

⁶⁶ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 9.

⁶⁷ In its 2010 draft bylaw, the City considered imposing a limitation of three bedrooms for Class "A" and "B" rental properties, based on data showing that the average "family" size in Waterloo, and median number of bedrooms per residential unit, is three. The OHRC raised concerns that averages and medians can blur real demographic and social distinctions, and affect people based on a number of *Code* grounds. In response to public input, the City raised the limit to four bedrooms before finalizing the bylaw.

⁶⁸ It is possible that the licensing bylaw could broaden the zoning bylaw's definition of lodging houses, such that 5+ bedroom units that house three or fewer people are required to abide by minimum separation distances – but that seems to be a merely academic question as presumably that type of property is not at all common.

house may face practical challenges with putting their children into rooms that are capable of being locked.

Based on the information currently before it, the OHRC cannot conclude that the City's practice of applying stricter requirements to units with five or more bedrooms disadvantages people because of their association with a *Code* ground. However, this practice may be arbitrary.⁶⁹ As noted in *Room for everyone: Human rights in rental housing* recommendation 6, arbitrary bedroom limitations can reduce the availability of viable housing for *Code*-protected groups and should be avoided.

4.4 Gross floor area requirements

As noted in *Room for everyone: Human rights and rental housing licensing*, recommendation 7, floor area requirements that are more stringent than Building Code regulations could contravene the *Code*.

The bylaw's ratio of bedroom space to overall floor area appears to impose a requirement that does not exist in the Building Code.

A landlord pointed out the inconsistency of this requirement being applied to some rental housing and not others:

... in one of the advertised floor plan of a highrise apartment which is exempted, the bedroom areas are 70% of the gross unit space. During the bylaw "town house" consultation there was no explanation of how this 40% rule came about.

Since grandparenting was available in some cases with respect to gross floor area requirements, the OHRC understands that the impact of this requirement in the short term has been minimized. On the information before it, the OHRC cannot conclude that the requirement has disadvantaged people because of their association with a *Code* ground. The OHRC notes, however, that the situation may evolve given that grandparenting is no longer available. The OHRC also notes the City appears to be applying this requirement to low-rise rental housing, but not to high-rise rentals or to owned housing. This may call into question any health and safety rationale for the requirement.

⁶⁹ The City stated "The data collected by the City supported limiting Class A and Class B rental units to three bedrooms. In response to public input, that was increased to four bedrooms." (Letter from City Counsel to the OHRC, September 28, 2012.) While this indicates a thoughtful approach, the OHRC is not aware of information before the City which showed that 5+ bedroom houses are categorically different (and require categorically different regulation) than houses with four or fewer bedrooms.

4.5 Bylaw-related costs

The OHRC addresses bylaw-related costs in *Room for everyone: Human rights and rental housing licensing*. Specifically, it underlines that there must be a reasonable connection between the cost of the service and the amount charged, and it urges municipalities to be mindful that fees associated with licensing, if passed on to renters, might drive up the price of housing.⁷⁰

Landlord survey respondents indicated that, because of the bylaw, rents per person or per room would be going up between \$10 and \$100/month, with most in the \$20 – \$50 range. They described rent-per-unit increases ranging from \$18 to \$200/month, with most in the \$30 – \$80 range.

A landlord recently told the OHRC that the bylaw-related fees, permit and inspection cost about \$1,200, and he raised the new tenant's rent by \$100 a month to cover these costs.

According to a 2011 report, the City indicated that the bylaw would result in a \$12 – \$20 cost per renter.⁷¹

The City maintained this position in correspondence to the OHRC in 2012. It underlined that these figures assume that full costs are passed along to the tenants. The City went on to state:

It is the City's best information that rents have remained stable across the municipality, that the vacancy rate has slightly increased, and that the number of rental units on the market has significantly increased since the Rental Housing Licensing By-law was passed in 2011.⁷²

The City suggested tenants might prefer to pay slightly higher rents if this would result in safer rental units that comply with the Building Code and the Fire Code. The City has also expressed a concern that some landlords may be taking advantage of the bylaw to justify rent increases in excess of actual bylaw-related costs.⁷³

Some tenants told the OHRC that they had not experienced rent increases recently; other tenants described rent increases associated with the bylaw.

While tenants have reported financial impacts relating to the bylaw, municipalities are allowed to charge fees for licensing, as long as they are proportional to the expenses of the program. The City provided data to the OHRC to show the

⁷⁰ *Room for everyone: Human rights and rental housing licensing*, OHRC, recommendation 13.

⁷¹ *Rental Housing By-law and Program Report No. PS-BL2011-016*, May 4, 2011, page 6. The City went on to state: "assuming the monthly fee of a 3-bedroom unit is \$450 per bedroom and if the landlord chooses to apply the added cost to the rent the licence fee increase would represent approximately a 2.5% to 5% increase."

⁷² Letter from the City's counsel to the OHRC, September 28, 2012.

⁷³ Letter from the City's counsel to the OHRC, September 28, 2012.

connection between licensing fees and the costs of services provided through the licensing program. In other words, the City appears to have established that its fees are proportional to services offered.⁷⁴

Information before the OHRC does not establish that the City's licensing fees discriminate against people because of their association with a Code ground.

4.6 Conclusion

"In some ways I think that the bylaw is good because it will give some basic standards for the conditions that houses must be in before they can be rented. I worry that it will increase rental prices and make less people inclined to buy houses and rent them to students in the end reducing the amount of selection and quality of housing available. It is already challenging in the Fall to find accommodations around the university of Waterloo and this will likely make it harder. I also feel like this bylaw is in favour of the larger apartment style student housing which is not aesthetically pleasing and also is not exactly the type of place where many student[s] wish to live."

– A Waterloo student survey respondent

Much like this student, the OHRC concludes that there are positive and negative aspects of the rental housing licensing bylaw. The OHRC applauds the City for working towards improved safety conditions for renters, and supports bylaw provisions that are needed to ensure that safety. All housing is subject to health and safety standards such as the Building Code and Fire Code. The OHRC agrees that effectively enforcing these standards enhances tenant safety.

⁷⁴ The City developed a cost recovery model over a multi-year period – from the outset of the bylaw to 2016. This model appears to have been based on an understanding that the City would experience losses in the first years of the program but profits in later years, amounting to overall cost recovery by 2016 (Report PS-BL2011-007, page 77). The OHRC recently learned that the City's revenue in the first year of the program was higher than expected. On May 15, 2013 the City commented:

The City is obviously pleased that far more landlords have applied for licences in the first year of the rental housing licencing program than it had estimated, resulting in increased revenue – the rental housing program has had more support and voluntary participation than expected when the City made its initial projections. However, the increased number of licence holders at this early stage will also increase the projected program costs – for example, one additional person has already been hired, and consideration is being given to further staffing increases. To a large extent, this "surplus" is the result of the fact that these extra costs lag behind receipt of revenue (because annual licence fees are due up front). As such, the City recovered its costs and was at a surplus (on a cash-flow basis) for the period ending one year after the by-law came into force. Over the initial five year period, the City still expects be at a net cost recovery position, with no surplus. ... [A]t the conclusion of the second year, if the City is still at a net surplus for the program, it will be conducting a review of its licencing fees. ... [A]part from any human rights considerations, the City is legally obligated not to use licence fees as a source of revenue exceeding program costs.

At the same time, certain other bylaw requirements are not justified.

Based on information before it, the OHRC has concluded that the bylaw's per-person floor area requirements are in some cases discriminatory and are not required to meet a safety standard. They should be eliminated.

The OHRC finds that there is no justification for the minimum separation distances imposed by the City of Waterloo. Arbitrary minimum separation distances, that are applied to rented accommodations but not to similar owned homes, are about regulating people, and often flow from stereotypes associated with renters. Arbitrary separation distances can contravene the *Human Rights Code*, and should be eliminated.

The OHRC is concerned that there appears to be an interest on the part of the municipality in redirecting renters – especially student renters⁷⁵ – into apartments or other high-density housing and out of low-rise areas. As noted in *Room for everyone: Human rights and rental housing licensing*, recommendation 5:

In accordance with the 2005 *Provincial Policy Statement*,⁷⁶ municipalities should provide for an appropriate range of housing types and densities required to meet projected requirements of current and future residents by, among other things, establishing and implementing minimum targets for providing housing that is affordable to low and moderate income households.

People do not have the right to choose their neighbours. Where planning decisions are made based on community opposition, or where those decisions "people zone," those decisions could be found to be discriminatory.

The OHRC urges the City to monitor the housing market, to make sure that the rental housing licensing bylaw does not arbitrarily limit access to low-cost rental housing, and that tenants, including students, are not experiencing displacement or difficulty finding housing because of their connection to a *Code* ground.

It is also essential that the City continue to educate people about the bylaw and related human rights principles to minimize the chances that *Code*-protected people will face displacement or difficulty finding housing, and to clear up any confusion about the licensing regime and the interaction between the different applicable bylaws.

⁷⁵ As noted in *Room for everyone: Human rights and rental housing licensing*, students are protected by the *Code* where they experience discrimination because of their association with *Code* grounds such as age, marital status or receipt of public assistance.

⁷⁶ *Provincial Policy Statement*, Government of Ontario, 2005, section 1.4 (Housing).

5. Recommendations

5.1 Per-person floor area requirements

The OHRC recommends that the City immediately eliminate per-person floor area requirements from its bylaw.

5.2 Minimum separation distances

There is a general trend towards removing MSDs from bylaws and official plans, and more than one bylaw has faced a legal challenge because it includes MSDs.⁷⁷

In communications with the OHRC, the City stated:

With respect to the planning purposes behind the classification and zoning of lodging houses, we again point out that these provisions go back almost twenty years, and that the City is right now undertaking a review of its Zoning By-laws, including the lodging house provisions. The City of Waterloo has changed significantly over the last few decades, and what is accepted as good and conventional planning practice has significantly developed over the last few decades, as has provincial policy and legislation. It would be premature to speculate how this review will ultimately affect the zoning (and definition) of lodging houses in the City of Waterloo, or what planning purposes will inform the lodging house zoning regime which will be implemented. That said, we again note that the new Official Plan does not contain MDS provisions.⁷⁸

On May 17, 2013, the City stated:

... the City cannot lawfully make any commitment at this time to amend its Zoning By-law to delete the existing MDS provisions. There are notice and procedural requirements that must be complied with prior to considering and passing a Zoning By-law. It would be improper and unlawful for the City to commit to any Zoning By-law or amendment without having taken such steps. As such, at this time we can only point you to the steps that the City has taken, including the passage of a new Official Plan which does not contain the MDS provisions that concern the Commission.

⁷⁷ The City of Guelph's zoning bylaw (2010) 19076, which imposed minimum separation distances on rental housing, was challenged at the Ontario Municipal Board. The City rescinded its bylaw before the case proceeded to a hearing. The City of Hamilton's refusal to enact a proposed amendment to zoning bylaw 6593 (which imposes minimum separation distances on group homes), is currently being challenged at the Ontario Municipal Board. The City of Toronto's pre-amalgamation zoning bylaws (currently in force), and city-wide zoning bylaw (currently in draft), which impose minimum separation distances on group homes and residential care homes and other uses, are currently being challenged at the Human Rights Tribunal of Ontario.

⁷⁸ Letter from the City's counsel to the OHRC, November 16, 2012.

City staff can commit to considering both the *Human Rights Code* and the Commission's comments in the course of preparing the new draft Zoning By-law. The Commission is encouraged to weigh in directly with the City (Development Services) if it wishes to make further comments on MDS restrictions or any other planning issues that would potentially impact on the new draft Zoning By-law that is currently being prepared. Legally, no further commitment can be made by the City at this time regarding the provisions of the City's zoning By-laws.

We can confirm that the City's comprehensive zoning review is already underway – it will look at all aspects of zoning for the entire City, with the principal goal of bringing the City's Zoning By-law into conformity with the new Official Plan. This process is regulated under the *Planning Act*, and public engagement is a key aspect of the zoning review. It is anticipated that this public engagement will occur in many forms, including informal public meetings, open houses, workshops, formal public meetings and various types of media. Although it will take some time to undertake this process, particularly given the numerous stakeholders and the City's desire to meaningfully engage these stakeholders, the target for completion of the new comprehensive Zoning By-law is sometime in 2014.

There is a very real possibility that the City's application of MSDs to certain rental units with more than three occupants will disadvantage people in Waterloo because of their association with a Code ground. The OHRC recommends that these MSDs be removed.

While the City expects to develop a new zoning bylaw sometime in 2014, and while that new zoning bylaw may not include the MSDs in question, the City remains vulnerable to a HRTO Application with respect to MSD provisions, until they are removed. In the meantime, the City may consider ways to mitigate the impact of existing MSD provisions. For example:

- The City could prioritize and expedite the comprehensive zoning review process
- The City could consider ways that MSD-related amendments can be considered and approved separate from (and perhaps prior to) other amendments
- The City could investigate whether it can limit the impact of MSD provisions, until such time as they can be removed
- City staff could make strong recommendations to those involved in the process, to remove the MSDs.

5.3 Monitoring

In communications with the OHRC, the City stated:

City staff are still developing an appropriate monitoring program. Given how recently the Rental Housing Licensing By-law came into force, and the fact that it is still in the process of being implemented, it is premature to commit to any particular formal monitoring regime. To date, the City has contacted universities, property managers, real estate professionals and student organizations, plus it hears directly from landlords, tenants and other members of the public in the ordinary course of administering the licensing program and the City's other by-laws. Based on this anecdotal input from the community, the City is as confident as possible – given the short passage of time since implementing the by-law – that the licensing program is not responsible for increased difficulty in finding rental units. The City will continue to monitor the situation.

The City went on to say:

The City will consider whether formal data gathering would be appropriate once the by-law has been in place for a sufficient period of time, and based on a consideration of its experience in the day-to-day course of administering the by-law and running the City.⁷⁹

The OHRC recommends that the City implement a monitoring program that tracks the impact of its licensing bylaw on Code-protected groups on an ongoing basis over a five-year period, consistent with the principles laid out in the OHRC publication *Count Me In! Collecting human rights-based data and Room for everyone: Human rights and rental housing licensing*, recommendation 12. The OHRC would be happy to help the City in this endeavour.

5.4 Enforcement

The City's "By-law Enforcement and Property Standards Procedure" states on page 7:

When making a decision related to the revocation or suspension of a Residential Rental Licensing Business the Director shall consider:

1. Imposing terms or conditions on any such licence revocation or suspension that would minimize the adverse impact on any Tenant, including the possibility of providing a reasonable time period before the licence revocation or suspension takes place to permit Tenants to find new housing or to seek relief from the Court or before the Ontario Landlord Tenant Board ...

⁷⁹ Letter from the City's counsel to the OHRC, November 16, 2012.

The OHRC recommends that the City state in the Procedure that the landlord, not the tenant, will be the focus of any enforcement action.

The OHRC further recommends that tenants of a rental unit be informed of any health and safety or other licensing violation as soon as the municipality is aware of it.

5.5 Education

It is essential that the City continue to educate people about the bylaw to ensure that it is understood and applied fairly and consistently in ways that minimize the chances of discriminatory impact.

The OHRC understands that the City has a "FAQ" section on its website. The OHRC recommends that the City ensure that this section addresses common points of concern and confusion, and refers to the Code. The OHRC also recommends that it mails the document in brochure form to "all tenants" of registered rental addresses.

The OHRC wishes to thank all of the people who took part in the inquiry, particularly the tenants who shared their opinions and experiences. The OHRC also thanks the staff and officials at the City of Waterloo for their cooperation. The OHRC remains available to assist the City in its ongoing monitoring and public education efforts related to the bylaw and its relationship to the Ontario Human Rights Code.

6. Appendix

As noted in the report, the OHRC conducted surveys as part of this inquiry. After the OHRC published its surveys, the City of Waterloo raised a concern that landlord surveys stated that the rental housing licensing bylaw imposes a 150m separation distance on lodging houses. The City clarified that the separation distance does not apply to all lodging houses in the city, and also that the City's zoning bylaw (and not the rental housing licensing bylaw) imposes separation distances.

The City also raised concerns about a statement on landlord surveys that the bylaw imposes "certain caps on the number of renters in a rental unit that is not a lodging house."

The OHRC followed up with landlords to clarify the minimum separation distance requirement, and to clarify that by stating that the bylaw imposes "certain caps on the number of renters in a rental unit that is not a lodging house," the OHRC means that "the rental housing bylaw creates certain caps on the number of renters in a rental unit that is not a lodging house because [i] bedrooms that are

for rent must have a minimum of 7 m² per occupant (exceeding Building Code requirements), and [ii] there must be no more than 4 bedrooms in total."

The OHRC has quoted in this report only the people it was able to reach with these clarifications and where applicable has included the additional comments they provided in the follow-up communication.

The City also raised a concern that tenant and organization surveys stated that the rental housing licensing bylaw imposes a 150m separation distance on lodging houses. The OHRC has not quoted any tenants or organizations in this report with respect to minimum separation distances. In any case, the OHRC followed up with people quoted in the report to ensure that the clarification did not change any of their answers.